IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE NINETEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI JUSTICE V.V.S.RAO

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WRIT PETITION Nos.8586, 9074, 9496 and 11270 of 2005

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WRIT PETITION No.8586 of 2005

Between:

M/s.S.R. Constructions , Rep by its Authorised Signatory,

Sri Nageswara rao S/o.Ramkodaiah, R/o.H.No.21, Sanjeevaiah Cooperative Society, Sikh Village, Secunderabad, Hyderabad.

..... PETITIONER

AND

1 The Chief Engineer, Roads & Buildings, Erramanzil Hyderabad.
2 The Superintending Engineer, Roads and Buildings, Kurnool Circle,
Kurnool.
3 The Executive Engineer, Road and Buildings, Adoni,
Kurnool District.
4 The Pay & Accounts Officer, Kurnool Town , Kurnool.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction more in the nature of Writ of Mandamus, declaring the action of the respondents in seeking to apply the Seigniorage rates in accordance with G.O.Ms.No.217, dt.29-9-2004 in respect of the work entrusted to the petitioner Company under CR Agreement No.38/2004-05 as arbitrary, illegal and violative of Articles 14,19, and 21 of the Constitution of India and consequently direct the respondents to recover the Seigniorage charges in accordance with the charges mentioned in the Contract Document or in the alternative to charge the enhanced rates to the value of the estimate.

Counsel for the Petitioner: MR.K.CHENCHURAMI REDDY

Counsel for the Respondents: GP FOR TRANSPORT, ROADS & BUILDINGS

WRIT PETITION No.9074 of 2005

Between:

M/s. Ramanaiah Constructions, Engineers and Contractors,

HIG 29 North Extension, Sri Sai Baba Mandir Marg, Seetammadhara, Visakahaptnam-13, Rep. by its Managing Partner Sri B. Ramanaiah,

S/o. Subbaiah, 65 Years.

..... PETITIONER

AND

1 The Government of Andhra Pradesh, Transport, Roads and
Buildings Department, Secretariat, Hyderabad - 500 022,

Rep. by its Principal Secretary.

2 The Managing Director, A.P. Road, Development Corporation-Cum-

Ex-Officio, Engineer-in-Chief, Andhra Pradesh, Erramanzil, Hyderabad.

3 The Superintending Engineer, R & B Circle, Seetammadhara, Visakhapatnam - 530 013.

4 The Executive Engineer, Roads & Buildings, Paderu - 531 024, Visakhapatnam District, Andhra Pradesh.

5 The Pay & Accounts Officer, I/C of Zone I, Y.R.C. Wing, Maharanipet, Visakhapatnam - 530 002.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus, or any other appropriate writ, order or direction, declaring the action of the respondents in deducting the seigniorage charges more than the rates mentioned in the lead statement and also deducting seigniorage charges for earth work also as arbitrary, illegal, high handed and violative of principles of natural justice and further direct the respondents to deduct the seigniorage charges at the rate of Rs.33/- and 13/- as provided in the concluded lead statement of the estimate for the work as applicable but not more than that and also direct not to deduct the seigniorage charges for the earth work and also further direct to refund an amount of Rs.1,56,968-40 deducted from the first bill of the petitioner.

Counsel for the Petitioner: MR.T.P.ACHARYA

Counsel for the Respondents: GP FOR TRANSPORT, ROADS & BUILDINGS

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WRIT PETITION NO : 9496 of 2005

Between:

K. Sanjeeva Reddy S/o Papi Reddy H. No. 2-6-1050 KLN Reddy Colony, Hanumakonda, Warangal.

..... PETITIONER

AND

1 The Superintending Engineer (R&B) Nizamabad Circle, Nizamabad.

2 The Executive Engineer R&B Division, Siddipet.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue any appropriate Writ, Order or Direction more particularly one in the nature of a Writ of Mandamus declaring the action of the Respondents in recovering the enhanced seigniorage fee under G.O.Ms.No.217 dated 29-09-2004 in respect of L.S. Agreement No.40/2004-05 dated 2-9-2004 executed between the petitioner and the Respondents as illegal and void and consequently declare that the Petitioner is liable to pay only the seigniorage fee mentioned in L.S. Agreement No.40/2004-05 dated 2-9-2004 in respect of “improvements to the road from Ahmedpur to Venkatraopet from KM 8/2 to 13/4 in Medak District".

Counsel for the Petitioner: MR.A.RAMALINGESWAR RAO

Counsel for the Respondents: GP FOR TRANSPORT, ROADS & BUILDINGS

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WRIT PETITION No.11270 of 2005

Between:

M.Rama Rao, s/o Satyanarayana Rao,
R/o Hazipur Village, Mancherial Mandal, Adilabad District.

..... PETITIONER

AND

1 The Secretary to Government of Andhra Pradesh, Roads &

Buildings Department, Secretariat, Hyderabad.
2 The Superintending Engineer, Roads & Buildings Circle,

Karimnagar, Karimnagar District.
3 The Executive Engineer, Roads & Buildings Division, Mancherial,

Adilabad District.
4 The Chief Engineer, Roads & Buildings, Erramanzil, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, Order or Direction, more particularly a Writ of Mandamus declaring the action of the respondents in deducting the seigniorage fee from the petitioner as per G.O.Ms.No.217, dt.29-9-2004 in respect of all items in execution of works covered under the agreement is nothing but illegal, arbitrary, without notice, unjust, violation of principles of natural justice and contrary to the agreement dated 30-10-2004 and consequently direct the respondents not to collect the enhanced seigniorage fee from the petitioner in respect of all items in execution of the contract works covered under the agreement dated 30-10-2004 and to refund the enhanced seigniorage fee if any deducted from the bills of the petitioner.

Counsel for the Petitioner: MR.K.VENUMADHAV

Counsel for the Respondents: GP FOR TRANSPORT, ROADS & BUILDINGS

The Court made the following:

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COMMON ORDER:

All the Writ Petitions are filed by special class civil contractors registered with Government of Andhra Pradesh. They are aggrieved by the action of Roads & Buildings Department Engineers in seeking to recover from the bills submitted by the petitioners, the seigniorage fee at enhanced rates as enhanced by Government in notification issued under Section 15(1) of the Mines and Minerals (Regulation and Development) Act, 1957 (for short, the Act) vide G.O.Ms.No.217, dt.29.9.2004. This Court initially granted interim orders in one of the cases. Therefore, all the matters were directed to be listed, heard finally and are being disposed of by this common order.

To appreciate the controversy the facts in W.P.No.9496 of 2005 may be noticed as an illustrative case. The petitioner, K.Sanjeeva Reddy, was awarded the work of improvements to the road from Ahmedipur to Venkatraopet from KM 8/2 to 13/4 in Medak District. The agreement between the petitioner and the Department was entered into on 02.9.2004. Clause 100.1 deals with the payment of seigniorage fee by the contractor. The same reads as under.

100.1 Seigniorage charges:

The seigniorage charges for the materials covered under this work shall be recovered from the contractor's bill at the following rates.

S.No.	Material	Seigniorage
1.2.3. 4.5.6.7.	SandMetalRR stone for masonryRevetment stoneC.R.S.stoneGarvel Earth for forming embankment	Rs.30.00/cum.Rs.33.00/cum.Rs.33.00/cum. Rs.33.00/cum.Rs.33.00/cum.Rs.13.00/cum.Rs.13.00/cum.

The rates are liable to be revised and amended from time to time by the State Government, by notification in the "Andhra Pradesh Gazette". If the revised seigniorage fee is more than the above mentioned, the recovery from the contractor's bill is as per revised rates.

The petitioner, there is no dispute; commenced the work and thereafter the Government of Andhra Pradesh, in Industries & Commerce Department in exercise of their powers under sub-section (1) of Section 15 of the Act amended A.P. Minor Minerals Concession Rules, 1966 (for short, the Rules) (in G.O.Ms.No.1172, dt.4.9.1967). By reason of the said amendment in schedules I and II under Rule 10 of the Rules, new rates of seigniorage fee are prescribed and substituted. The rates of seigniorage fee were enhanced. Be it also noted that as per G.O.Ms.No.217, dt.29.9.2004, the enhanced rates came into force with effect from 1.10.2004.

After coming into force of the amendment to the A.P.Minor Minerals Concession Rules with effect from 1.10.2004, it appears, the Engineers of Roads and Buildings Department insisted that the contractor should pay the enhanced seigniorage fee as per G.O.Ms.No.217, dt.29.9.2004 and also made attempts to deduct the enhanced seigniorage fee over and above the earlier rates from the bills submitted by the contractors. On this cause of action, all the writ petitions were filed.

In all other writ petitions, but for the difference in the dates of execution of the agreement and the dates for completion of the work, the facts are similar. In all the cases, petitioners entered into contracts prior to coming into force of G.O.Ms.No.217, dt.29.9.2004 and all the works are to be completed after 1.10.2004 and therefore they were also advised to pay enhanced rates of seigniorage fee.

A reference may be made to the counter affidavit filed by third respondent in W.P.No.9496 of 2005. It is stated that as per the agreement seigniorage charges will be recovered as per the rules from the work of the contract or based on technical requirement of materials, and as per clause 100.1 the rates of seigniorage charges are liable to be revised as and when they are amended by the State Government in the A.P.Gazette. If the rates are revised and seigniorage fee is more than what is mentioned in the agreement, recovery has to be made from the bills submitted by the contractor. The petitioner agreed to condition No.100.1 and hence there is no illegality in collecting the enhanced rates of seigniorage fee as per G.O.Ms.No.217, dt.29.9.2004.

The Writ Petition is also opposed on the ground of maintainability and suggesting that grievance is redressable only in Civil Court. A reference is also made to an unreported judgment of Division Bench of this Court in **R.M.C.Constructions Ltd. V. The Engineer in Chief** (unreported judgment in W.P.No.26040 of 2001, dt.3.3.2003; hereafter called, **RMC Constructions** case) contending that the point raised herein is squarely covered by the Division Bench judgment just referred to.

Learned counsel for the petitioners, M/s.K.Chenchu Rami Reddy, T.P.Acharya, A.Ramalingeswara Rao and K.Venumadhav made the following submissions. The amendment under Section 15(1) of the Act vide G.O.Ms.No.217, dt.29.9.2004 being prospective with effect from 1.10.2004, the enhanced rates of seigniorage fee cannot be collected from the contractors. Clause 100.1 is a vague clause and therefore cannot be enforced. Alternatively, as the work is estimated by taking into consideration the rates of seigniorage fee as they existed prior to coming into force of G.O.Ms.No.217, dt.29.9.2004 the liability to pay enhanced seigniorage fee is not on the contractor, and therefore enhanced rates cannot be collected or deducted from the bills submitted by the contractors. Alternatively, they also submit that even if clause 100.1 enables the Government to collect enhanced rates of seigniorage fee in respect of work completed prior to 1.10.2004, the Government is not entitled to deduct or collect the enhanced seigniorage fee, prior to coming into force of G.O.Ms.No.217.

Learned Government Pleader for Transport, Roads and Buildings, at the out set, does not dispute that as per G.O.Ms.No.217, dt.29.9.2004 respondents are entitled to collect enhanced rates of seigniorage fee in respect of work or in respect of material extracted and used in the work after 1.10.2004. Therefore, this point need not detain this Court any longer. If there is any stray case where the respondents insisted upon the contractors to pay enhanced rates of seigniorage fee for the work completed from the date of contract till 30.9.2004, the respondents shall have to initiate steps for refunding or adjusting said amount in the other bills.

The core question is two-fold. Whether the Government can press into service clause 100.1 and whether Government can deduct the enhanced seigniorage fee as per G.O.Ms.No.217, dt.29.9.2004 from the bills submitted by the petitioners. Though there is feeble attempt on the part of the learned counsel for the petitioners, the question is squarely covered by unreported judgment of the Division Bench of this Court in **RMC Constructions** case (supra).

In **RMC Constructions** case (supra), the contractor was liable to pay seigniorage charges at the rate of 25% CMT. When the contract was in currency, the Government enhanced the rates of seigniorage fee by issuing notification vide G.O.Ms.No.331, dt.21.6.2000. The action of the Government was impugned in the Writ Petition *inter alia* on the ground that G.O.Ms.No.331, dt.21.6.2000 being prospective in nature, the same cannot be applied to the contract entered into by the contractor prior to coming into force of the amendment. Reliance was also placed on the terms of the contract. The Division Bench did not agree with the submission. It was held that the State is entitled to collect seigniorage fee on the minerals extracted and removed from the land and therefore, the rates applicable on the date of extraction of minerals is prevalent rate which has to be paid by the contractor. It is apposite to excerpt the following.

> …In our considered opinion, the submission that levy and collection of the seigniorage charges at the rate of Rs.33/- per CMT would amount to giving retrospective operation to the amended Rules is misconceived. As we have observed hereinabove, the liability to pay the seigniorage fee specified is with reference to the extraction and removal of the minor minerals from the land for the purpose of consumption in any work whatsoever by the consumer. The State shall be entitled to levy and collect such seigniorage fee on the minor minerals extracted and removed from the land in accordance with the prevalent rates specified under the Rules as on that date of removal or extraction of the minor minerals. That is precisely what has happened in the instant case. The terms and conditions of agreement entered into by and between the parties or such similar arrangement if any made amongst the parties shall have no bearing upon the operation of the statute or statutory Rules as the case may be. The date on which the petitioner entered into an agreement with the respondents is totally irrelevant in our considered opinion for the purposes of levy and collection of the seigniorage fee in accordance with the rates specified under the Rules issued and amended from time to time.

A reading of the dicta, as above, would show that even in the absence of covenant/clause in the contract like clause 100.1 it is permissible for the Government to collect the enhanced rates of seigniorage fee. In this case, clause 100.1 obliges the contractor to pay the seigniorage charges as amended by the State from time to time and also empowers the employer to recover the revised rates of seigniorage fee from the bills of the contractor. It is admitted case of all the petitioners that they entered contracts with the Government and such contract includes clause 100.1, which empowers the State to recover the enhanced seigniorage fee from the bills. Reading clause 100.1, this Court is not able to countenance the submission of the learned counsel for the petitioners that it is vague. Clause 100.1 speaks of revised rates of seigniorage fee and publication of amendment in the gazette. The seigniorage fee can be prescribed by the State only in exercise of their powers under Section 15(1) of the Act by duly amending schedule I to A.P. Minor Minerals Concession Rules. In that view of the matter, there is neither vagueness nor confusion in clause 100.1 of agreement. Said clause certainly refers to the revision of seigniorage fee as per the provisions of the Act duly amending A.P. Minor Minerals Concession Rules. Thus, the case of the respondents in seeking to recover enhanced rates of seigniorage fee with effect from 1.10.2004 does not suffer from any vice of illegality. However, as already observed, the Government is entitled to recover enhanced rates of seigniorage fee only with effect from 1.10.2004 that too on the minerals extracted by the contractors after 1.10.2004.

The Writ Petitions, with the above observations, are accordingly dismissed.

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July 19, 2005 **(V.V.S.RAO, J)**

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To

1 The Chief Engineer, Roads & Buildings, Erramanzil, Hyderabad.
2 The Superintending Engineer, Roads and Buildings, Kurnool Circle,

Kurnool.
3 The Executive Engineer, Road and Buildings, Adoni,

Kurnool District.
4 The Pay & Accounts Officer, Kurnool Town , Kurnool.

5 The Principal Secretary, Government of Andhra Pradesh, Transport,

Roads and Buildings Department, Secretariat, Hyderabad- 500 022.

6 The Managing Director, A.P. Road, Development Corporation-Cum-

Ex-Officio, Engineer-in-Chief, Andhra Pradesh, Erramanzil, Hyderabad.

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Visakhapatnam - 530 013.
8 The Executive Engineer, Roads & Buildings, Paderu - 531 024,
Visakhapatnam District, Andhra Pradesh.
9 The Pay & Accounts Officer, I/C of Zone I, Y.R.C. Wing,
Maharanipet, Visakhapatnam - 530 002.

10 The Superintending Engineer (R&B) Nizamabad Circle, Nizamabad.
11 The Executive Engineer, R&B Division, Siddipet.

12 The Secretary to Government of Andhra Pradesh, Roads &

Buildings Department, Secretariat, Hyderabad.

13 The Superintending Engineer, Roads & Buildings Circle,

Karimnagar, Karimnagar District.

14 The Executive Engineer, Roads & Buildings Division, Mancherial,

Adilabad District.

15 Two CCs to the Government Pleader for Transport, Roads &

Buildings, High Court Buildings, Hyderabad. (OUT)

16 Two C.D. Copies.